

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

County

Reg. No: 201270175
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 21, 2012
DHS: Kent

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, an in-person hearing was held on November 21, 2012. Claimant appeared with her authorized representative, [REDACTED] and provided testimony on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED].

Hearing record was extended 90 days for a second SHRT review of medical reports submitted at the hearing. (Claimant Exhibit 1).

ISSUE

Was disability, as defined below, medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant's MA-P (February 4/March Retro) application on April 2, 2012, was denied on May 11, 2012, per BEM 260, with a hearing request on August 3, 2012.
2. Claimant was age 51, with a high school or more education, and with work history as an unskilled cashier, and skilled [REDACTED] tax professional and data entry work. (DHS Exhibit A, Page 108).
3. Claimant's last employment ended February 20, 2012, due to medical reasons.
4. Claimant alleges disability due to medically diagnosed disorders brain aneurism, pinched nerve in the back, depression, and chronic headaches. (DHS Exhibit A, Page 119).

5. Medical reports of examination state the Claimant on:
 - a. June 20, 2011, Claimant was alert and oriented X 3; mentation was intact; that manner, affect, and dress were appropriate; that with cerebellar testing, mainly finger and nose, this was performed without significant tremors, dysmetria, or pronator drift; that cranial nerves tested were grossly intact; that motor strength testing was 5/5 in all muscle groups tested in the upper and lower extremities; that sensory examination was intact to light touch; that deep tendon reflexes were 2/4 and symmetrical in the upper and lower extremities; that she was able to ambulate under her own power without using any external walking assist devices; that heel walking, toe walking, and tandem gait were normal; that Romberg testing was normal; that exam of the cervical and dorsolumbar spine revealed no vertebrae muscle spasms per gross abnormalities; that straight leg raising was positive on the right but Claimant was otherwise neurologically intact, including with a normal gait; that it is felt that Claimant should be able to alternate sitting or standing, be able to perform non-repetitive stooping, non-repetitive bending, and non-repetitive stair climbing; that she should be able to lift 20 pounds, be able to climb stairs, and able to walk; that even with the positive straight leg raising on the right, she was able to drive to the office for this consultation; that for the purpose of disability determination, the Claimant has a history of depression and is not seeing anyone for this program. (DHS Exhibit A, Pages 37 & 38).
 - b. June 20, 2011, Claimant has the ability to sit, stand, bend, stoop, carry, push, pull, button close, tie shoes, dress-undress, open door, making fist, pick up coin, pick up pencil, write, squat and arise from squatting, get on and off examining table, climb stairs; that she can walk on heels and toes in tandem, that gait is stable and within normal limits; that she needs no support for walking; that her overall grip strength is 5/5. (DHS Exhibit A, Pages 40 & 41).
 - c. June 20, 2011, Claimant has a normal range of motion for the lumbar spine. (DHS Exhibit A, Page 42).
 - d. March 22, 2012, Claimant has no focal neurological deficit; that motor testing shows no deficit; that she is neurologically intact; that she has no sensory deficit; that her numbness above the incision, tingling, paresthesias, trismus, fatigability, and depression, typically improve with time. (DHS Exhibit A, Page 16).
 - e. February 22, 2012, Claimant is neurologically grossly normal. (DHS Exhibit A, Page 20).
6. SHRT report dated October 1, 2012, states the Claimant's disorders do not meet/equal a Social Security listing. (DHS Exhibit A, Page 119).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Facts above are undisputed.

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Step 1 disability is not denied. The evidence of record established the Claimant has not engaged in substantial gainful activity since February 20, 2012.

Step 2 disability is not denied. The medical evidence of record, on date of application, establishes the Claimant's significant functional mental/physical incapacity, based on the de minimus standard, to do basic work activities for the required 1 year continuous duration as defined below.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and

- (6) Dealing with changes in a routine work setting.
20 CFR 416.921(b).

SEVERE IMPAIRMENT

To qualify for MA-P, claimant must first satisfy both the gainful work and the duration criteria (20 CFR 416.920(a)) before further review under severity criteria. If claimant does not have any impairment or combination of impairments which significantly limits physical or mental ability to do basic work activities, an ultimately favorable disability determination cannot result. (20 CFR 416.920(c)).

The Claimant has the burden of proof to establish disability, as defined above, by the preponderance of the medical evidence of record...20 CFR 416.912(a).

Claimant testified that she is disabled mentally due to depression, poor memory and concentration; and that physically she has extreme chronic headaches and back pain, that she is limited to walking 1 block, sitting 45 minutes before legs go numb; and that she is limited to lifting/carrying 1 gallon of milk.

GAINFUL WORK

Clients who are working and performing substantial gainful activity (SGA) are not disabled regardless of medical condition, age, education or work experience. (20 CFR 416.920(b)).

Therefore, the Claimant has sustained her burden of proof to establish a severe mental/physical impairment, instead of a non-severe impairment, for the required duration. Therefore, the sequential evaluation is required to continue to the next step.

Step 3 disability is denied. The medical evidence of record, for the required duration, does not establish Claimant's impairments meet/equal a Social Security listing.

The listing of impairments describes for each of the major of body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all evidence, the evidence must show the 1 year continuous duration. 20 CFR 416.925(a).

Claimant introduced no medical evidence of record by a treating, examining, non-examining physician that Claimant's impairments would meet the requirements of any Social Security listing. To the contrary, the SHRT medical consultant addressed the matter and found insufficient medical evidence of a disability under a Social Security listing.

Therefore, the sequential evaluation will continue to the next step.

Step 4 disability is denied. The objective medical evidence of record, on date of application, does not establish the Claimant's functional mental/physical incapacity, despite her impairments, to perform any of her past work such as an H&R Block skilled tax professional for the required 1 year continuous duration.

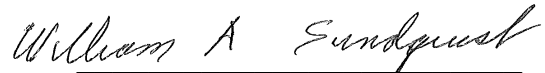
The medical reports of record are examinations, diagnostic, treatment and progress reports and do not provide medical assessments of Claimant's past work limitations for the required duration. Said differently, do the Claimant's diagnosed medical disorders impair the Claimant minimally, mildly, or moderately (non severe impairment as defined above) or severely, as defined above?

Therefore, medical disability has not been established at Steps 3 & 4 by the competent, material and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that disability was not medically established.

Accordingly, MA-P denial is **UPHELD**.



William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 12, 2013

Date Mailed: February 12, 2013

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.

- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant,
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

WAS/kl

cc:

